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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-seventh session, 26–30 August 2013

No. 25/2013 (Morocco)

Communication addressed to the Government on 25 June 2013

Concerning: Ali Aarrass

The Government has not replied to the communication.

The State is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

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(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. The case has been reported to the Working Group on Arbitrary Detention as follows:

4. Mr. Ali Aarrass, who has Moroccan and Belgian nationality, was born on 4 March 1962 in Farkhana (in the region of Nador), Morocco, and is married and the father of a young girl. He is usually resident at 16 (basement flat), Calle del General Palafox, in Melilla, Spain, where he works as a driver.

5. On 1 April 2008, Mr. Aarrass was arrested and placed in detention in Algeciras, Spain, with a view to his extradition to Morocco. An international warrant for his arrest had been issued on 25 March 2008 by the Crown Prosecutor at the Rabat Court of Appeal in connection with the criminal prosecution of several persons accused of belonging to the so-called "Belliraj" terrorist network, named after the main defendant.

6. According to the source, Mr. Belliraj had first mentioned Mr. Aarrass during the preliminary investigation, when he was held incommunicado. He had subsequently retracted his statement before the investigating judge, saying that he had been brutally tortured into making a false confession. While on trial, Mr. Belliraj reiterated that he had been tortured in order to implicate others.

7. The source asserts that, in the context of that case, proceedings had been launched against Mr. Aarrass in Spain on the same grounds but had been dropped. Nevertheless, the Spanish courts had continued to consider the case for his extradition and had finally acceded to the request by the Moroccan authorities. The Spanish Council of Ministers endorsed the decision on 19 November 2010.

8. On 25 November 2010, in view of the imminent risk of extradition faced by their client, Mr. Dounia Alamat and Mr. Christophe Marchand, of the Brussels Bar, and Mr. Mohamed Ali Nayim, of the Melilla Bar, sent an urgent communication to the Human Rights Committee to request the adoption of interim measures in order to prevent the forced return of Mr. Aarrass.

9. On 26 November 2010, the Human Rights Committee granted the lawyers' request and expressly appealed to the State party, Spain, not to extradite Mr. Aarrass to Morocco until a final decision had been reached.

10. On 14 December 2010, the Spanish authorities extradited Mr. Aarrass to the airport of Casablanca. Neither his family nor his lawyers were informed of the measure.

11. The source reports that, upon his arrival at Casablanca airport, Mr. Aarrass was handcuffed and led to a vehicle, where other police officers blindfolded him and then took him to Temara prison. He reports that, upon exiting the vehicle, he was violently beaten and insulted by several people who stripped him naked and placed him in a room in total darkness.

12. Mr. Aarrass was tortured constantly for five days. He was beaten, electrocuted and subjected to a mock drowning, as a result of which he fainted. He was also threatened with rape and deprived of sleep, food and water. He was given injections that caused a bout of dementia and left him unconscious.

13. Mr. Aarrass was then taken to the home of a relative in Nador, with the purpose of compelling him to reveal information on weapons that supposedly had been concealed in that person's home. No weapons were found and Mr. Aarrass was taken to the local police station, where he was again tortured throughout the night. The following morning, he was taken to a nearby forest, where he was subjected to a mock execution.

14. Mr. Aarrass was finally returned to the headquarters of the Directorate-General for National Security in Temara, where for three days he was again subjected to torture sessions as on the day he first arrived, as well as another mock execution.

15. On 23 December 2010, Mr. Aarrass was transferred to the national brigade of the criminal investigation department in Casablanca and, the following day, was brought before the public prosecutor's office of the Salé Court of Appeal in an appalling physical and psychological state. It is reported that he was unable to speak, move or even stand up.

16. The investigating judge appointed by the Crown Prosecutor carried out a cursory interrogation, without any lawyers present. Relatives of Mr. Aarrass learned of his appearance before a judge through the press only on 27 December 2010. His first contact with a lawyer occurred on the same day, in the presence of the deputy director of Salé prison, who was accompanied by prison warders.

17. The trial of Mr. Aarrass, who was charged with "involvement in a terrorist network and arms trafficking", was held on 24 November 2011. The prosecution produced no material evidence and relied solely on the reports drawn up in Temara prison, signed under duress and written in Arabic, which Mr. Aarrass cannot read.

18. After less than an hour of hasty discussion, during which the judges refused to give consideration to procedural flaws and serious violations of the right to a fair hearing and the rights of the accused, Mr. Aarrass was sentenced to 15 years' imprisonment.

19. After the victim filed an appeal against his conviction, the Salé Court of Appeal reduced the original sentence to 12 years' imprisonment in an equally hasty hearing held on 1 October 2012. The court failed to take into account the allegations of torture made by the accused or to order a proper medical examination in order to assess the truth of his claims.

20. On 2 May 2011, Mr. Aarrass decided to inform the secretary-general of the National Human Rights Council about the torture he had suffered in custody. To date he has received no reply.

21. His lawyers have submitted a complaint to the Committee against Torture and that procedure is currently pending.

22. The source considers that the detention of Mr. Aarrass at present can be seen only as a case of arbitrary deprivation of liberty under category III of the categories used by the Working Group. The deprivation of liberty of Mr. Aarrass constitutes a violation of the International Covenant on Civil and Political Rights, in particular article 9, paragraphs 1 and 4, and article 14, paragraph 1. It also constitutes a violation of article 23 of the Moroccan Constitution.

23. The source states that Mr. Aarrass was tortured throughout the 10 days he was held incommunicado in order to extract statements from him, and that he had no legal assistance and was at no time allowed to contact his family. He was subjected to ill-treatment and was deliberately denied the protection of the law before being forced to sign confessions designed to be used as the grounds for his criminal prosecution and conviction.

24. The source considers that the trial of Mr. Aarrass was unfair and that at no point, during either the investigation or even the trial proceedings, was he given the chance to contest the validity of the charges brought against him. His conviction is based exclusively on the records of preliminary investigations drawn up in illegal circumstances while he was held in incommunicado detention.

25. The source asserts that the courts refused to take into account statements by Mr. Aarrass to the effect that he had been tortured and forced to sign statements without understanding what they were, when in fact they had an obligation to consider his allegations and order an inquiry.

Response from the Government

26. In a letter dated 25 June 2013, the Working Group requested the Government of Morocco to forward any information it wished in response to the above allegations.

27. The Government has neither replied to the letter nor requested a deadline extension, which it is entitled to do under paragraph 16 of the working methods. Accordingly, the Working Group considers that it is in a position to render an opinion on the basis of the information available to it.

Discussion

28. A reading of the allegations shows that Mr. Aarrass has been prosecuted for being a member of a terrorist network; that he was subjected to torture and detained incommunicado for 10 days and deprived of legal assistance throughout that period; that his conviction is based solely on statements written in Arabic, which he does not understand, and obtained under duress; that there is no material evidence for the charges against him, particularly those relating to his involvement in a terrorist network and arms trafficking; that the Court of Appeal refused to order a medical examination to assess the allegations of acts of torture, and that, on the same matter, the National Human Rights Council was approached but has not reacted; and, finally, that the complaint filed before the Committee against Torture is still under consideration.

29. The Working Group regrets that, given the seriousness of the allegations, the Government has deemed it unnecessary to respond, especially since, in the same period, it has replied to other communications, which the Working Group welcomes.

30. The Working Group adds that the Committee against Torture, in its concluding observations (CAT/C/MAR/CO/4, para. 8) on the fourth periodic report submitted by Morocco in November 2011, noted with concern that, under the Anti-Terrorism Act No. 03-03 of 2003, the legal period of custody is extended to 12 days in cases involving terrorism, and that access to a lawyer is not permitted until after the sixth day, placing suspects held in custody at greater risk of torture. The Working Group notes that it is precisely when suspects cannot communicate with their families and lawyers that they are most likely to be tortured (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, arts. 2 and 11).

31. The Working Group draws attention to the fact that the Committee against Torture also stated in its concluding observations (CAT/C/MAR/CO/4, para. 10) that it was concerned by numerous allegations regarding torture and ill-treatment committed by police officers, prison staff and, in particular, agents of the National Surveillance Directorate (DST) who are acting as members of the criminal investigation police force when people are deprived of basic legal safeguards, such as access to legal counsel, particularly in the case of people who are suspected of belonging to terrorist networks or of being supporters of independence for Western Sahara and in the course of interrogations carried out in order

to extract confessions from persons suspected of terrorism (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, arts. 2, 4, 11 and 15).

32. The Working Group draws attention to its Opinion No. 40/2012.

33. The observations contained therein lend credence to the allegations mentioned above and, in the light of the Government's failure to provide a response, the Working Group concludes that such violations undermine the chances of Mr. Aarrass receiving a fair hearing, with all the guarantees required by international law.

Disposition

34. In the light of the preceding, the Working Group renders the following Opinion:

On the basis of these observations, the detention and the conviction, based on confessions obtained under torture, in the absence of any material or other evidence and with no investigation having taken place to confirm the veracity of the confessions, are contrary to articles 9, 10 and 11 of the Universal Declaration of Human Rights, and articles 9 and 14 of the International Covenant on Civil and Political Rights, and fall under category III of the criteria applicable to the consideration of cases submitted to the Working Group.

35. Consequent upon the opinion rendered, the Working Group requests the Government of Morocco to release Mr. Aarrass immediately, to grant him adequate compensation and, in the future, to cooperate more closely with the Working Group, as it has been requested to do by the relevant resolutions of the Human Rights Council.

[*Adopted on 28 August 2013*]